

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNIVERSITAS EDUCATION, LLC,

Judgment Creditor, :

-against- : Case Nos. 11 CV 1590-LTS-HBP and
11-08726-LTS

NOVA GROUP, INC., as trustee, sponsor and :
fiduciary of THE CHARTER OAK TRUST :
WELFARE BENEFIT PLAN, :

Judgment Debtor.
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DECLARATION OF PAULA K. COLBATH
IN SUPPORT OF MOTION FOR TURNOVER

PAULA K. COLBATH, an attorney admitted to practice law in the Courts of the State of New York, declares the following under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am a partner in the law firm of Loeb & Loeb LLP, attorneys for Universitas Education, LLC (“Universitas”), the Petitioner/Judgment Creditor in the above-captioned proceeding. I respectfully submit this declaration in support of Universitas’ motion for a turnover order, (i) directing that \$253,112.74 of the funds on deposit at Webster Bank in New York, representing assets owned by Judgment Debtor Grist Mill Grist Mill Trust Welfare Benefit Plan (“Grist Mill Plan”) (Webster account number XXXXXXXX419), and any additional surplus monies belonging to the Grist Mill Plan remaining in the account above this amount and not earmarked by the Grist Mill Plan for its premium payments, be turned over to Universitas; (ii) directing that the funds on deposit at Webster Bank in New York, which holds an account for Hanover Benefit

Plans, LLC, Judgment Debtor Grist Mill Plan's Plan Sponsor (Webster Bank account number XXXXXXXX426), with a balance of \$149,412.20 as of February 29, 2016, be turned over to Universitas; and (iii) granting such other and further relief as the Court deems just and proper.

2. Annexed hereto as **Exhibit A** is a copy of the August 12, 2014 Judgment awarded by the Court in favor of Universitas and against Judgment Debtor "Grist Mill Trust Welfare Benefit Plan, and any trustees and plan sponsors thereto insofar as they hold Grist Mill Trust assets, in the amount of \$4,487,007.81."

3. Annexed hereto as **Exhibit B** is a copy of a letter dated April 15, 2014, addressed to "Grist Mill Trust," produced by the Grist Mill Plan (Bates number GMT-000501), appointing "Hanover Benefit Plans, LLC as the successor Plan Sponsor for the Trust." Thus, Hanover, as Plan Sponsor of the Grist Mill Plan "hold[ing] Grist Mill Trust assets," is also a Judgment Debtor.

4. To date, the Judgment against Judgment Debtor Grist Mill Plan remains uncollected.

5. Annexed hereto as **Exhibit C** is a copy of Hanover's bank account at Webster Bank as of February 29, 2016, which shows an ending balance of \$149,412.20.

6. On March 31, 2016, my office spoke with Janet Zarick, Assistant Vice President at Webster Bank, who informed us that Hanover's account at Webster Bank had been dormant since November 2015.

7. Annexed hereto as **Exhibit D** is a copy of Grist Mill Plan's bank account at Webster Bank as of February 29, 2016, which shows an ending balance of \$343,286.85.

8. Annexed hereto as **Exhibit E** is the Court's Order of December 13, 2014 Modifying Restraining Notices Served on Grist Mill Trust Welfare Benefit Plan, Hanover Benefit Plans, LLC And Webster Bank (the "Modification Order") (Dkt. 544).

9. By agreement among counsel, on February 2, 2016, the provisions of the Restraining Notice in the Modification Order were extended through July 29, 2016.

10. However, the Grist Mill Plan has been recalcitrant in providing Universitas with its monthly emails listing the insurance premiums that will be due each month, which the Grist Mill Plan is required to do pursuant to the Modification Order. The emails from Grist Mill Plan's counsel to the undersigned have been sporadic, at best.

11. Annexed hereto as **Exhibit F** is the Webster Bank account for the Grist Mill Plan, for the December 2015 time period. As can be seen in Exhibit F, there was a large deposit made by the Grist Mill Plan's Trustee, Kathy Kehoe, into the Grist Mill Plan's account on December 17, 2015 in the amount of \$253,112.74, which Ms. Kehoe could not explain at her recent deposition on April 6, 2016 in another matter, even though she recently made that large deposit into the account.

12. Annexed hereto as **Exhibit G** is an excerpt from the Grist Mill Plan's General Ledger, showing the amount of \$253,112.74 credited to the Grist Mill Plan on December 17, 2015.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
April 22, 2016



PAULA K. COLBATH

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